
(2009) 11 JH CK 0020
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 99 of 2009

Maresh Sao

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6A(1), 6C(1), 7

Citation : (2009) 11 JH CK 0020

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; J.C. to G.P. III, for the Respondent

Judgement

R.R. Prasad, J.—Heard learned Counsel appearing for the petitioner and learned Counsel appearing for the State.

2. Learned Counsel appearing for the petitioner submits that earlier this petitioner had moved before Court vide Cr.M.P. No. 710 of 2007 for release of the Truck bearing Registration No. JH-02F 1906, which had been seized in connection with Simaria P.S. Case No. 106 of 2006 as the prayer for release of the Truck had been refused by the learned Magistrate and even by the Revisional court.

3. While the said matter was pending before this Court, the Confiscating Authority initiated a confiscation proceeding for confiscating the said truck and when this fact was brought to the notice of this Court, the said Cr.M.P. No. 710 of 2007 was disposed of with a direction to the Confiscating Authority to decide the matter relating to maintainability of the proceeding in the light of the decision rendered by the Hon'ble Supreme Court, in the case of Kailash Prasad Yadav and Anr. v. State of Jharkhand and Anr. reported in 2007 (3) ECC 107 (SC)

4. Pursuant to that order, the petitioner did file an application before the Confiscating Authority, taking a plea that the seizure of the truck is illegal as there had been no violation of any of the order issued u/s 3 of the Essential Commodities Act and in support of his submission, even the decision of the

Hon"ble Supreme Court in the case of Kailash Prasad Yadav (supra) was filed. However, when no order was passed the petitioner filed instant application for release of the truck. While the matter was pending before this Court, the Confiscating Authority-Opposite Party No. 2 rejected the plea of the petitioner for the reasons that the petitioner failed to produce a copy of the said decision before him and, thereby prayer for release of the truck has also been rejected, which order was challenged before this Court by way of filing Interlocutory Application.

5. Learned Counsel appearing for the petitioner submits that while the truck, in question, was carrying Rice, it was intercepted by the Police who not only seized the rice but also seized the truck and lodged the case u/s 7 of the Essential Commodities Act along with other Sections of the Indian Penal Code, though on that day no order issued u/s 3 of the E.C. Act regulating Sale, Purchase, Stock relating to Rice etc. was in force. Therefore, seizure, when was itself illegal, the petitioner made prayer for release of the vehicle, but that was refused by the court and even by the Confiscating Authority though the Confiscating Authority had no jurisdiction to initiate a proceeding for confiscation, as there had been no violation of any of the order issued u/s 3 of the E.C. Act and as such the order passed by the Confiscating Authority, refusing to release the vehicle, in question, is quite illegal.

6. The submission advanced on the behalf petitioner calls for attention of the provision as contained in Section 6A of the E. C. Act, which reads as follows:

[6A. Confiscation of essential commodity-

(1)] Where any [essential commodity is seized] in pursuance of an order made u/s 3 in relation thereto, [a report of such seizure, shall without unreasonable delay be made to] the Collector of the district or the Presidency-town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector, [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him and if he is satisfied] that there has been a contravention of the order [may order confiscation of-

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity].

Provided that without prejudice to any action which may be taken under any provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made u/s 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him be confiscated under this section.

[Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance].

(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under Sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may-

(i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall-

(a) where no order of confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under Sub-section (1) of Section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner thereof or the person from whom it is seized.]

7. From its reading, it does appear that if the Collector, on the allegation of which a vehicle was seized, is satisfied that the provision of any of the order issued u/s 3 of the E.C. Act has been contravened, then he can initiate a confiscating proceeding for confiscating the truck or article, but as has been stated on behalf of the petitioner, which has not been denied on behalf of the State that on the date of the seizure that is on 17.11.2006, no order issued u/s 3 of the E.C. Act regulating Sale, Purchase, Stock etc. of rice was in force, seizure of the truck was itself illegal and that when there has been no contravention of any of the order, issued u/s 3 of the E. C. Act, the Collector does not get jurisdiction to initiate a proceeding for confiscating the truck. Similar view has been expressed by Hon"ble Supreme Court in a case of Kailash Prasad Yadav (supra).

8. Accordingly, the order dated 03.07.2009 passed by the respondent No. 2- Deputy Commissioner/Magistrate, Chatra, under which prayer of the petitioner to release the vehicle has been refused, being quite illegal, is hereby set aside.

9. Hence, the respondent No. 2- Deputy Commissioner, Chatra is hereby directed to release the truck bearing Registration No. JH-02F 1906 immediately on

production of a copy of this order.

10. Accordingly, this application is allowed.